IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 496 OF 1989

The State of Maharashtra. ... Appellant.

Versus.

1. Shri Kantilal Mohanlal Khinvasara.
2. Shri Vijaykumar Mohanlal Khinvasar. ... Respondents

Shri K.K.Tated, A.G.P. for the Appellant.

Ms.Monica D'Souza, i/by Shri A.K.Abhyankar for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 17th March, 2006.

ORAL JUDGMENT.

1. Heard the learned Advocates appearing for the parties. The challenge in this Appeal preferred by the State Government is to the judgment and award made on 18th June 1988 under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The Respondents are the original claimants. The land subject matter of this Appeal owned by the Respondents was acquired under the said Act. After declaration of the award under section 11, the Respondents applied for a reference under section 18 of the said Act.

2. By the impugned Judgment and Award, the

Reference is decided. The Reference Court declined to grant enhancement in the compensation. However, the Reference Court granted benefit of interest under section 23(1-A) and Solatium under section 23(2) of the said Act as amended by Amendment Act 68 of 1984.

3. Shri Tated, the learned A.G.P. appearing for the Appellant submitted that as the Award under section 11 of the said Act was made in the year 1978, the statutory benefits could not have been granted to the Respondent.

4. The law on this point is very clear. As the Award under section 11 of the said Act is made prior to 30th April 1982, The Respondents were not entitled to the interest under section 23(1-A) of the said Act. However, when the Act No.68 of 1984 came into force, the Reference Application under section 18 of the said Act was pending and therefore, the Respondents will be entitled to the benefit of solatium under section 23(2) of the said Act. The well settled position of law can be found in the decision of the Apex Court reported in (2002) 2 SCC page 605 (Kashibai v/s. Special Land Acquisition Officer). Hence the Appeal must succeed in part.

5. In view of the above, the following order is passed:

(i) Direction given by the impugned Judgment and Award to the Appellant to pay interest to the Respondents under section 23(1-A) of the said Act is set aside. Rest of the Award is maintained.

(ii) The Appeal is partly allowed in the above terms with no order as to costs.

Judge.